(1)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

AT BILASPUR

WRIT PETITION NO. 6067 /05

PETITIONER

T.R. Sidar, aged about 40 years, S/o Shri Shrilal Sidar, Posted as – Block Resource Co-ordinator (BRC), (Rajeev Gandhi Shiksha Mission) Sarva Shiksha Abhiyan, R/o – Village Bodadih, Post – Gendapali, Tehsil – Bilaigarh, District:- Raipur, (C.G.)

P.R. No. 6155/05
Presented by Shri Rakesh Dhar
dated 29.11.05

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through: Secretary School Education Department, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)

2. State Mission Director, Rajeev Gandhi Shiksha Mission, Raipur (C.G.).

3. Collector, Raipur, (C.G.).

4. District Education Officer, Raipur, (C.G.).

5. Shri Satyanarayan Sahu, Upper Division Teacher – Govt. Higher Secondary School, Bilaigarh, District – Raipur, (C.G.).

RECEIVED COPY
29.11.05
CLERK to A. G. BILASPUR

WRIT PETITION UNDER ARTCLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDUMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

XI-HC-78

(67)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 6067/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	4-4-2006 Shri Ranbir Singh with Shri Sumit Jhanwar, counsel for the petitioner. Shri A.S. Kachhawaha, Govt. Adv. for the State/ respondents No. 1 to 4. Shri Prateek Sharma, Adv. for the respondent No. 5. Heard. The petitioner, who is Upper Division Teacher, is an employee of School Education Department. His services were taken on deputation to Rajeev Gandhi Shiksha Mission for one year as per order dated 7-6-2002 Annexure P-2. He served there for about 4½ years. Thereafter as per order dated 18-11-2005 Annexure P-1, respondent no. 5 Satyanarayan Sahu, Upper Division Teacher, has been sent as Block Coordinator, Rajeev Gandhi Shiksha Mission, Bilaigarh, Distt. Raipur. The petitioner challenged the said order on the ground that he has acquired training and his services will be very beneficial for the Rajeev Gandhi Shiksha Mission. Learned counsel for the petitioner submits that there is no order regarding posting of petitioner. The Order Annexure P-1 has only been passed with respect to respondent no. 5. It is contended that it is against the transfer policy.	

(68)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Return has been filed by respondent no. 2 in which it has been stated that the petitioner was sent on deputation vide order Annexure P-1 for a period of one year whereas he has remained there for about 4 years. It is contended that it is the choice of the State that a person should be posted wherever. It is also contended that the order has been passed because of exigencies of service. The other persons are also to be trained and opportunities should be given to all. It is further contended that the order has been passed after due coordination with the Minister, School Education. It is further contended that the order of respondent No. 5 Annexure P-1 took its place with regard to Annexure P-4 dated 17-1-1996 with due coordination with the State Government, and therefore there is no violation of the transfer policy. It is also contended that pursuant to the order, respondent no. 5 has already joined as per Annexure R-2/1. The Respondent no. 5 has also filed return. It is stated that the petitioner has been repatriated to his parent department and not transferred, that too after more than three years. It is submitted that because of stay granted by this Court the petitioner is working and respondent no. 5 though joined is not getting salary since last 5 or 6 months. It is contended that in the order Annexure P-1, there is an endorsement for relieving the petitioner to his parent department.	

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is a settled law that the deputationist has no right to continue on deputation or to claim permanent absorption in borrowing department, unless his permanent absorption is covered by a statutory provision.

In ***Kunal Nanda vs. Union of India and another*** reported in ***2000(5) SCC 362***, the Hon. Supreme Court held as under:

> *"A deputationist cannot assert and succeed in his claim for permanent absorption in the department where he works on deputation, unless his claim is based upon a statutory rule, regulation or order having the force of law. A deputationist can always and at any time be repatriated to his parent department, at the instance of either borrowing department or parent department. There is no vested right in such a person to continue for long on deputation or get absorbed in borrowing department."*

In ***Union of India through Govt. of Pondicherry and another vs. V. Ramakrishnan and others*** reported in ***2005(8) SCJ 18***, the Hon. Supreme Court held as under:

> *"Ordinarily the deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post haste manner also indicates malice."

In the instant case, the term has expired. The petitioner was sent for deputation for one year and he remained there for about four years. In that view of the matter, no case is made out for any interference in the order dated 18/11/2005 (Annex.P/1).

So far as the posting and other reliefs are concerned, it is open to the petitioner to make a representation before the competent authority and if such a representation is made, it shall be considered and decided on its own merits in accordance with law.

With the aforesaid observations, this petition stands disposed of.

Consequently, all the pending applications also stand disposed of.

Sd/-
Fakhruddin
Judge

P/H-